

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of

Modernizing the E-rate
Program for Schools and Libraries

WC Docket No. 13-184

**COMMENTS OF THE AMERICAN CABLE ASSOCIATION
ON THE NOTICE OF PROPOSED RULEMAKING**



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SUMMARY

The American Cable Association (“ACA”) represents more than 800 small and mid-sized cable television operators, most of whom also offer voice services and broadband Internet access services and many of whom provide or wish to provide E-rate supported services. Because almost all ACA members have deployed advanced broadband infrastructure in their service territories and continue to upgrade these facilities, they can help the Commission achieve its E-rate modernization goals most effectively and efficiently.

The Commission’s E-rate proceeding is vital and ambitious, seeking to make much needed and far-reaching changes to an already successful program. In making the pivot from the program’s current goals to new objectives, ACA believes the Commission should be guided by the following principles:

- Focus on High-Speed Broadband Connectivity. Because high-speed broadband services have become so essential, the Commission should re-orient E-rate support to focus on providing high-speed broadband connectivity to and within schools and libraries.
- Use Existing Infrastructure to the Maximum Extent Practical. To ensure the program achieves its objectives most efficiently, maximizes the effectiveness of its limited funding, and provides incentives for providers to continue to invest their own capital in broadband infrastructure, E-rate funding recipients should make all reasonable efforts to use existing infrastructure prior to constructing new facilities.
- Facilitate Maximum Participation by Service Providers. A key way for the E-rate fund to operate efficiently, maximizing the value of its limited resources, is to encourage greater participation by service providers currently participating in the program and by facilitating participation by other providers – so that schools and libraries receive multiple bids to provide infrastructure and services.
- Cap E-rate Funding at the Current Level. Instead of increasing the total size of the E-rate fund to meet its new high-speed broadband connectivity objectives, the Commission should re-orient the fund, reducing support for certain legacy services, such as paging and voice-related services, and increasing program efficiencies.

These principles should be applied to issues raised in the Notice of Proposed Rulemaking (“NPRM”), but first the Commission needs to gather the facts. As Chairwoman Clyburn and others have stated, there is a dearth of data (facts) upon which the Commission can base any action. Thus, the immediate task for the Commission, prior to adopting major new initiatives for the E-rate program, is to collect the facts, including an inventory of existing infrastructure, broadband dependent applications and services (and their performance requirements) used today by teachers and students and those that are likely to be used, and the number and types of access devices and technologies used today and those expected to be used in the near future.

As for its initial policy proposals, ACA proposes the following:

1. In obtaining high-speed broadband connectivity, schools and libraries should use facilities and services that already exist to the maximum extent practical. The Commission can readily implement ACA’s proposed policy through a certification process where those seeking to receive E-rate support would need to demonstrate they have made all reasonable efforts to receive high-speed connectivity using existing facilities and services.

2. At the heart of the NPRM lies the issue of funding. The implication in the NPRM is that significant funding will be required, but the amount is indeterminate. ACA strongly believes that the current amount allocated for E-rate support (\$2.25 billion) should be capped and that the Commission should work within this constraint to fund the new proposals. The Commission itself has demonstrated in its recent decisions on universal service distributions it can make its programs fiscally responsible.

3. The competitive bidding process should encourage and facilitate participation by service providers (especially those who have not previously participated in the program), and the key to increasing participation is for the Commission to take greater control of the process and

simplify and standardize the requirements, while maintaining the program's integrity and accountability. ACA suggests the following measures, many of which are based on policies discussed by the Commission in the NRPM:

- Permit service providers to offer all services on the Eligible Services List regardless of their regulatory classification. ACA submits this requirement should be adopted because it would facilitate participation in the E-rate program by many cable operators and other providers that may not be subject to (or have chosen to be subject to) traditional telecommunications regulation.
- Simplify the Eligible Services List so that services are defined regardless of regulatory classification. This proposal would address the concern that cable operators and other providers may offer services that are comparable to those on the ESL but may not be classified according to traditional telecommunications regulation.
- Adopt a "Suggested" Template for FCC Form 470. ACA proposes the Commission undertake a process to develop a template Form 470 that applicants should be encouraged to use. The template would provide a common format along with suggested terms and conditions and, at the same time, enable the applicant to tailor the solicitation to unique requirements. Use of a common template for Form 470 also would help achieve the Commission's objective of ensuring "cost-effective purchasing on an application-by-application basis."
- Provide for Enhanced Notification of Solicitations. ACA suggests the applicant post a notice in a major local publication and make reasonable efforts to contact potential service provider bidders, particularly those with facilities in the relevant area.
- Provide Consistent Requirements for the Procurement Process. While applicants should continue to comply with state and local government requirements, it is essential the FCC establish and enforce requirements for a fair and open competitive bidding process and any state and local requirements should not supersede these federal requirements. The rationale is straightforward: the Commission has a responsibility to ensure that federal funds are spent most effectively and efficiently. In addition, by having a more consistent requirements, services providers should find it easier to participate.

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The American Cable Association (“ACA”) respectfully submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) to modernize the E-rate program for schools and libraries.¹ The NPRM addresses the important issue of how to provide schools and libraries with affordable access to 21st Century broadband that supports digital learning, raises a great many questions about how to achieve this goal, and sets forth a number of far-reaching proposals. In brief, the proceeding is a vital and ambitious undertaking. In these initial comments, based on the experiences of many of its members and its participation in many of the Commission’s universal service proceedings, ACA offers its initial analysis and recommendations on ways the Commission might best achieve its aims in this proceeding. ACA intends to provide additional information in reply comments and as the proceeding progresses.

I. BACKGROUND ON ACA AND ITS INTERESTS IN THIS PROCEEDING

ACA represents more than 800 small and mid-sized cable television operators, most of whom also offer voice services and broadband Internet access services. For many reasons, ACA

¹ See *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, FCC 13-100 (rel. July 23, 2103).

and its members have a substantial interest in the Commission's efforts to modernize the E-rate program. Most importantly, almost all ACA members have deployed advanced broadband infrastructure in their service territories and continue to upgrade these facilities. As such, in many, if not most instances, they can offer the high-capacity broadband connections proposed for schools and libraries in the NPRM. For this reason, ACA members can help the Commission achieve its E-rate modernization goals most effectively and efficiently.

Approximately 260² ACA members recently provided (and may still be providing) E-rate supported services, including telecommunications and Internet access services, to schools and libraries. In general, they are interested in providing services under the new E-rate rules the Commission is considering in this proceeding. Many other non-participating operators are increasingly interested in becoming E-rate participants. Thus, they too have an interest in this proceeding, particularly by having the Commission adopt regulations ensuring they have a fair opportunity to compete to provide E-rate supported services. ACA believes that the interest of these members and their full participation in the E-rate program would help the program achieve its objectives most effectively and efficiently.

ACA members also have a substantial interest in ensuring that the government does not provide support to build facilities where they already exist. Overbuilding is inequitable to providers that have used their own capital to deploy facilities and is contrary to the public interest since it would discourage additional investment in broadband networks. Additionally, utilizing existing networks is most efficient and would best leverage limited government funding to meet the Commission's aims.

² Most of these are smaller incumbent local exchange carriers. The others are traditional, primarily larger, cable operators and municipal providers. ACA determined these providers by matching recent lists of providers funded by the E-rate program with ACA's list of members.

Finally, most ACA members contribute to the universal service fund. Over the past fifteen years, the fund, particularly its high-cost and Lifeline components, has grown substantially, and the contribution rate has soared to over 15 percent. This increased rate places a real burden on the customers (including lower income customers) of ACA members and acts as an economic drag on their businesses. Accordingly, ACA members have sought to cap overall universal service funding and believe funding for new projects should be found within the existing budget. In addition, ACA has argued in the “USF Contribution” proceeding that the Commission should not now impose universal service levies on broadband services.³ It maintains that position in this proceeding.

As discussed in these comments, ACA supports many of the Commission’s proposals to modernize the E-rate program and has additional proposals that it believes are beneficial. Because of its members’ substantial interests in the program, ACA intends to work with the Commission so that it can move forward expeditiously and adopt an order.

II. ACA’S PROPOSED PRINCIPLES FOR E-RATE REFORM

The Commission proposes three objectives for the E-rate program: provide schools and libraries with “21st Century broadband,” maximize the cost-effectiveness of funding, and streamline administration of the program.⁴ ACA concurs in these objectives. Further, based on the experience and expertise of its members in building and operating networks offering state-of-the-art services, it believes there are a series of more specific principles that Commission should use to guide its E-rate modernization efforts:

³ See Reply Comments of the American Cable Association, WC Docket No. 06-122 and GN Docket No. 09-51, at ii (Aug. 6, 2012).

⁴ See NPRM, ¶ 12.

- Focus on High-Speed Broadband Connectivity. E-rate funding should evolve rapidly to fund principally access to high-speed broadband (including underlying telecommunication) connectivity to and within schools and libraries. As the Commission has concluded, broadband is essential infrastructure,⁵ which, once installed and operational, will provide the long-term foundation upon which a vast array of services and applications can be provided. Consequently, the Commission should seek in this proceeding to pivot from using E-rate support to fund non-broadband facilities and services and focus on providing high-speed broadband connectivity to and within schools and libraries.
- Use Existing Infrastructure to the Maximum Extent Practical. In providing high-speed broadband connectivity, E-rate funding recipients should make all reasonable efforts to use existing infrastructure prior to constructing new facilities. By adhering to this principle, the Commission can achieve its objectives most efficiently, maximize the effectiveness of the limited funding it has for the E-rate program and provide incentives for providers to continue to invest their own capital in broadband infrastructure.
- Facilitate Maximum Participation by Service Providers. A key way for the E-rate fund to operate efficiently, maximizing the value of its limited resources, is to encourage greater participation by service providers currently participating in the program and by facilitating participation by other providers – so that schools and libraries receive multiple bids to provide infrastructure and services.
- Cap E-rate Funding at the Current Level. While the Commission has proposed in the NPRM admirable objectives to propel digital learning, these need to be tempered by fiscal realities, especially the current very high universal service contribution rate. In this regard, the Commission has a good track record. The Commission has a cap in place on E-rate expenditures. In addition, in establishing the Connect America Fund, the Commission made fiscal responsibility a prime objective, increasing efforts to expand broadband deployment within a fixed budget based on previous high-cost fund expenditures.⁶ It should adhere to these precedents in this proceeding, seeking to provide additional support for high-speed broadband connectivity by re-orienting the fund to reduce support for some legacy services, such as paging and voice-related services, and by increasing program efficiencies, and not by increasing the total size of the fund.

⁵ See *National Broadband Plan*, Executive Summary (March, 2010) at xi (“Like electricity a century ago, broadband is a foundation for economic growth, job creation, global competitiveness and a better way of life.”).

⁶ See *Connect America Fund*, et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663, Section VII.B., ¶¶ 121-126 (2011) (“*USF/ICC Transformation Order/FNPRM*”).

In the next section, ACA applies these principles to specific proposals to modernize the E-rate program.

III. SPECIFIC PROPOSALS FOR E-RATE MODERNIZATION

A. Broadband Infrastructure: Connectivity, Performance, and the Need for Data

The Commission proposes in the NPRM to focus E-rate funding on “services that provide high-capacity broadband to school and library buildings” and “that disseminate the high-capacity broadband within those buildings.”⁷ ACA generally supports this proposal. ACA members are finding that their customers are subscribing to higher-speed tiers and accessing more data over their broadband connections. Thus, high-speed last mile and in-building broadband connectivity⁸ should be considered essential for schools and libraries participating in the E-rate program.⁹

⁷ NPRM, ¶ 65.

⁸ In defining high-speed broadband connectivity, the Commission should follow its precedent in the Connect America Fund and base it on network performance, regardless of technology.

⁹ In the NPRM (¶ 320), the Commission inquires about “permitting students and the general public to receive E-rate funded Internet access offsite through wireless hotspots.” ACA concurs that these hotspots have the potential to provide students important off-campus connectivity to facilitate their studies. Further, it may be possible to impose authentication procedures that may limit abuse, although that is a subject requiring additional exploration before the Commission proceeds. In addition, it is possible to enable students to efficiently access community hotspots by using those parts of an existing network. Of course, the Commission, to stay within the current E-rate budget as proposed by ACA, should establish funding priorities, and this service offering should be ranked lower than those involved with bringing broadband connectivity to students at schools and patrons at libraries.

ACA, however, is greatly concerned about the use of E-rate funding to enable non-students to access community hotspots (¶ 323). In effect, this would place the federal government in the “muni” hot spot business, most likely in competition with private sector providers. This is unacceptable. The Commission also needs to tread carefully here so as not to undermine the educational mission of the E-rate program.

The Commission next inquires about whether, in defining digital learning, it should adopt the minimum bandwidth targets proposed by the State Educational Technology Directors Association (“SETDA”) for Internet access and Wide Area Networks (“WANs”) for the 2014-2015 and 2017-2018 school years: for Internet access, 100 Mbps increasing to 1 Gbps per 1,000 users, and for WANs, 1 Gbps increasing to 10 Gbps per 1,000 users.¹⁰ ACA believes this question highlights a major concern with this proceeding. There is a dearth of data about not only the broadband needs of schools and libraries but about many other key issues. Thus, while broadband performance targets are valuable and SETDA’s proposals may well be the proper targets for all schools in light of increasingly more sophisticated, interactive, and video-intensive learning applications, ACA cannot support adoption of SETDA’s proposal without further information.¹¹

ACA’s concern about the need for better data was just raised by Chairwoman Clyburn in her remarks at the Annenberg Retreat at Sunnylands, “Good data drives good policy. And I’ll be blunt. We need good data if we’re going to get this [E-rate modernization] right. We need data when it comes to the bandwidth schools need...We need data to understand how to cut costs,

¹⁰ See NPRM, ¶¶ 23-24. See also, “The Broadband Imperative: Recommendations to Address K-12 Education Infrastructure Needs,” SETDA at 2 (2012), available at: www.setda.org. (“SETDA Report”). The SETDA recommendations were the basis of the President’s ConnectED initiative “target of at least 100 Mbps with a target of 1 Gbps to most schools and libraries within 5 years.” See NPRM, ¶ 22.

¹¹ ACA finds the SETDA report contains valuable data about broadband needs of schools, but these are based on examples rather than a systematic review. Cisco also addressed this same issue in a new report. See “High-Speed Broadband in Every Classroom: The Promise of a Modernized E-Rate Program,” Cisco at 21-27 (Sept. 2013). Cisco provides target bandwidths for Internet access and WANs which are more aggressive than those provided by SETDA. Because Cisco’s report was just issued, ACA is still discussing its recommendations with its members.

The Commission also inquires about setting a bandwidth target for libraries and cites to a Gates Foundation discussion of a broadband capacity tool developed by the State Library of Kansas, which suggests a target of 1 Gbps by 2020. See NPRM, ¶ 25. ACA believes this target may be appropriate but again calls for the Commission to collect sufficient data on which to base such a conclusion.

increase efficiency, streamline the program, and deliver that broadband capacity to and within schools in the most cost-effective manner.”¹² Thus, the immediate task for the Commission, prior to adopting major new initiatives for the E-rate program, is to collect the facts, including an inventory of existing infrastructure, broadband dependent applications and services (and their performance requirements) used today by teachers and students and those that are likely to be used in the future, and the number and types of access devices and technologies used today and those expected to be used in the near future.¹³ Once this is accomplished, it will have the firm foundation required to begin to chart a course for achieving the ambitious aims for the E-rate program.

Of course, collecting data to develop these initial policies is only a first step. The Commission correctly seeks comment on updating its FCC Form 471 which schools and libraries are required to file when applying for E-rate funding and which includes, among other things, information about the nature and type of broadband facilities they are obtaining “to provide information necessary to monitor and measure our proposed goal.”¹⁴ ACA supports this proposal and believes the Commission should collect granular data from recipients about broadband supply and demand and should publish annual reports based on the aggregate data. These reports will provide transparency and a basis on which to assess the current program and determine how it might be amended.

¹² “Connected in the Digital Age: Improving American Education through Technology,” Prepared Remarks of Acting Chairwoman Mignon L. Clyburn, Hosted by the Annenberg Retreat at Sunnylands, at 2 (Sept. 10, 2013) (“Chairwoman Remarks”).

¹³ ACA is not alone in highlighting the need for such an inventory. The Education SuperHighway organization too considers an inventory essential. See, www.educationsuperhighway.org. (“There is currently no comprehensive set of national data that can identify schools struggling with inadequate bandwidth...This information will...help federal policy makers maximize the impact of the existing \$2.5 billion of annual FCC funding to help schools upgrade their Internet access and infrastructure.”).

¹⁴ NPRM, ¶ 31.

B. Broadband Infrastructure: Using Existing Infrastructure to Drive Efficient Connectivity

In providing high-speed broadband connectivity to and within all schools and libraries, ACA strongly believes this connectivity should be provided over existing facilities to the maximum extent practical. There are many reasons the Commission should adopt such an approach:

- Existing providers have constructed – and continue to build vast amounts of last mile and “metro” and other transport infrastructure supporting the provision of high-speed services, including the provision of these services to schools and libraries.
- Existing providers have experience and demonstrated expertise in operating broadband networks and provisioning services over shared plant to users requiring a high degree of quality and reliability.
- Existing facilities take advantage of important economies of scale which are key to efficient deployment and operation.

Accordingly, use of existing facilities would maximize the program’s efficiency and best leverage its limited funding. It also would minimize use of government support to alter the competitive balance in the market by making an incumbent provider compete against a government supported entrant.

The Commission can readily implement ACA’s proposed policy through its certification process. Those seeking to receive E-rate support would need to make all reasonable efforts to receive high-speed connectivity using existing facilities. This would include issuing a solicitation (FCC Form 470) for the connectivity and services it seeks to procure, which should be set forth in a provider-neutral manner with industry standard terms and conditions. Then, if the recipient of support decides not to use existing facilities or services to any extent, it would need to certify that it has conducted sufficient due diligence to acquire them and provide specific

reasons for not using this infrastructure or services.¹⁵ ACA notes that its proposal is not dissimilar to the safeguards adopted by the Commission in the *Healthcare Connect Fund Order*,¹⁶ which is cited in the NPRM,¹⁷ and it supports including those requirements as well.

C. Broadband Infrastructure: Funding Options

At the heart of the NPRM lies the issue of funding. In the NPRM, the Commission notes that the current E-rate budget is already inadequate to fund “a substantial percentage of the priority two requests it receives.”¹⁸ These requests are in large part for internal connections that are required to bring gigabit connectivity all the way to students, whether in the classroom or on campus. Then, on top of the current shortfall in funding, the NPRM proposes an ambitious new undertaking in terms of bringing high-speed broadband connectivity all the way to each student. As discussed earlier, without sufficient data, the amount of funding required to achieve this task is unknown. So, the implication is that significant funding will be required, but the amount is indeterminate. It thus becomes difficult to provide comment on whether and how to re-orient

¹⁵ Based on the network deployments of ACA members, it is most likely that “metro” (or WAN) and middle-mile facilities have already been deployed in most markets other than in more rural areas. These facilities usually have enormous (multi-gigabit) capacity and provide large economies. Thus, while the program should support obtaining access to metro and middle-mile facilities, in most areas, new deployments, if they are required at all, should largely be last mile and in building facilities.

In addition, most customers, even enterprise customers, generally do not build their own facilities. After all, these customers have little experience in building, operating, maintaining, and upgrading these networks. Accordingly, they procure from service providers a package of services, including network management and maintenance functions that are inherent in providing these services. Schools and libraries using E-rate support are not dissimilar and thus should have the burden to demonstrate that the construction of any new facilities is justified.

¹⁶ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, FCC 12 – 150, 27 FCC Rcd 16678, 16712-13 (2012). (“*Healthcare Connect Fund Order*”).

¹⁷ See NPRM, ¶ 81.

¹⁸ See *id.*, ¶ 62.

funding for the program and then whether and how much additional funding should be required. Despite these challenges, the NPRM asks many questions about funding options to support the E-rate program's new direction, and ACA responds below with initial thoughts.

As discussed earlier, ACA strongly believes any discussion of E-rate funding should begin from the premise that the current amount allocated for support (\$2.25 billion) should be capped and that the Commission should endeavor to work within this constraint to fund the new proposals. The Commission itself has demonstrated in its recent decisions on universal service distributions it understands this reality.¹⁹ In addition, the Chairwoman too has stated that “resources are not unlimited, and we have a responsibility to be careful stewards of public resources.”²⁰

The fact is that the overall universal service fund has grown so significantly over the past 15 years that it is placing real burdens on consumers, effectively harming some of the individuals it was designed to benefit. The contribution factor for third quarter 2013 stands at 15.1 percent²¹ and is poised to rise to 15.6 percent in the fourth quarter,²² which is far above earlier levels.²³ As the Joint Board noted in its November 2007 Recommended Decision, “[l]arger contributions increase the risk that telecommunications services will become unaffordable for some, or even a

¹⁹ See, e.g., *USF/ICC Transformation Order/FNPRM*, Section VII.B.

²⁰ Chairwoman Remarks at 3.

²¹ See *Proposed Third Quarter 2013 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 13-1361 (2013).

²² See *Proposed Fourth Quarter 2013 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 13-1880 (2013).

²³ For example, the contribution rate in second quarter 2000 was 5.7 percent. See *Proposed Second Quarter 2000 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 00-517 (2000).

substantial number, of consumers”²⁴ – a result that actually serves to undermine the goal of making services available ubiquitously at affordable prices.

An increase in the contribution factor increases costs to consumers in real terms (*i.e.*, the price paid for a service) and in costs generated from an increase in distortion of consumption decisions. In other words, because demand for services other than basic telephone service are somewhat elastic (*i.e.*, more sensitive to price fluctuations),²⁵ for a given increase in the price of the service, the level of consumption of that service decreases proportionally. Thus, as the size of the contribution rate grows, not only do consumers incur that cost, but they also consume less of the service than they would otherwise. Certainly no one would argue that it is good to suppress the demand for telecommunications services, but suppression of demand for these services is the exact result of a contribution rate so high. For these reasons – as well as because the Commission has demonstrated in the *USF/ICC Transformation Order/FNPRM* that it can modernize universal service in a fiscally responsible manner – ACA members believe that if E-rate funds are distributed efficiently going forward, the Commission can meet the objectives set forth in the NPRM without increasing the currently budgeted amount.

The Commission in the NPRM proposes a number of ways to re-orient spending within the current budget. First, it discusses phasing down support for a number of services, such as paging services and directory assistance and certain voice related features and functionalities.²⁶ ACA supports this proposal but notes that these services do not entail significant program outlays. Second, the Commission inquires about whether it should phase out support for services

²⁴ See *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45. Recommended Decision, 22 FCC Rcd 20477, 24083 (¶ 24) (2007).

²⁵ See *Cong. Budget Office, Financing Universal Telephone Service* at 19 (2005), available at <http://www.cbo.gov/ftpdocs/61xx/doc6191/03-28-Telephone.pdf>.

²⁶ See NPRM, ¶¶ 92-93, 95-98.

that are only used for voice communications, which would free-up a much more significant amount – more than \$400 million annually.²⁷ ACA supports limiting funding for voice communications because it believes the E-rate program should focus on providing high-speed broadband connectivity;²⁸ however, it is important to establish a proper transition so that applicants and service providers do not suffer undue harm.

Third, the Commission suggests that schools and libraries should be encouraged to aggregate demand to obtain lower prices.²⁹ ACA believes that although it is unclear how large the savings may be from this activity, this is a reasonable proposal reflecting standard marketplace practices. However, in permitting it, the Commission should ensure it does not unreasonably limit participation by service providers or otherwise have an anti-competitive effect – a concern also raised by the Commission.³⁰ ACA is particularly concerned that smaller providers may be effectively excluded from bidding and providing services because bulk purchasers may require services to be provided over an area far exceeding the provider's service territory. This would effectively leave a larger, regional provider as the only bidder to provide the requested service. This would not only be to the detriment of the smaller provider but also would be contrary to the Commission's aim of encouraging service providers to bid. ACA suggests the Commission may wish to establish general guidelines (consistent with antitrust laws) for purchasing groups to prevent such practices and then address problems on a case-by-case basis.³¹

²⁷ See *id.*, ¶¶ 105-107.

²⁸ Increasingly voice services can be readily and relatively expensively provided as over-the-top services.

²⁹ See NPRM, ¶¶ 178-190.

³⁰ See *id.*, ¶ 185.

³¹ These guidelines may include a requirement that a purchasing group certifies it has developed its request for proposal to attract the greatest number of bidders.

The Commission also inquires about whether it should amend the E-rate program's requirement that any support should go to services with a core purpose of educating students (or others on a school's campus) or serving library patrons.³² ACA believes the program needs to adhere closely to its core purpose and not venture into seemingly related, but non-core or ancillary, areas. First, the E-rate program's mission of serving student and library patrons is important and its value is well-recognized. Diluting it may well undermine support for the program. Second, E-rate funding is limited, and, especially given the new proposed aims, the program cannot spare support for non-core purposes. Third, there is a good chance that the private sector is already meeting any non-core purposes, and thus government support is not required.

Finally, in addition to these proposals, ACA believes, as discussed herein, that the program would use its funding most efficiently by requiring recipients to maximize their use of existing infrastructure and to encourage new service providers with existing infrastructure already in the market to participate in the program.

D. Increasing Service Provider Participation to Enhance Program Efficiency

The Commission seeks comment on how to improve the competitive bidding process, including by encouraging service providers to participate, which would reduce the number of no-bid or single-bid responses to solicitations.³³ ACA supports this effort. As noted at the outset, many ACA members participate in the program today, and they spend substantial resources and time understanding and complying with the regulations. So far, ACA's smaller entities have not been able to justify that investment. They would likely participate if the costs – both upfront and

³² See *id.*, ¶ 100.

³³ See *id.*, ¶ 202.

for ongoing compliance – were lower. In effect, the process has become a barrier to entry and a barrier to the program becoming more efficient.

ACA believes the key to increasing participation is for the Commission to take greater control of the process and simplify and standardize the requirements, while maintaining the program’s integrity and accountability.³⁴ It suggests the following measures, many of which are based on policies discussed by the Commission in the NRPM:³⁵

1. Permit service providers to offer all services on the Eligible Services List regardless of their regulatory classification. The Commission raises this issue in the NPRM and notes that it adopted this approach in the *Healthcare Connect Fund Order*.³⁶ ACA submits this requirement should be adopted because it would facilitate participation in the E-rate program by many cable operators and other providers that may not be subject to (or have chosen to be subject to) traditional telecommunications regulation.

2. Simplify the Eligible Services List so that services are defined regardless of regulatory classification.³⁷ ACA agrees with the Commission’s proposal that the ESL should “remove the regulatory classifications of telecommunications and Internet access.”³⁸ It would address the concern that cable operators and other providers may offer services that are comparable to those on the ESL but may not be classified according to traditional telecommunications regulation.

³⁴ The LEAD Commission also has called on the Commission to simplify the E-rate process. See “Paving a Path Forward for Digital Learning in the United States,” LEAD Commission at 13 (2013). (“The program should be simplified to make it easier for school districts to access E-Rate funds.”)

³⁵ See NPRM, Section V (“Streamlining the Administration of the E-Rate Program”).

³⁶ See *id.*, ¶ 250.

³⁷ The ESL also should avoid use of any terms so unique to the services of any type of provider that they act as a *de facto* barrier to entry.

³⁸ *Id.*, ¶ 248.

3. Adopt a “Suggested” Template for FCC Form 470. Form 470 sets forth for service providers an applicant’s requirements and notifies them of the applicant’s intent to contract. Because it plays such a key role in the solicitation and the formulation of bids by service providers, the Commission rightly raises questions about whether it is adequate to inform service providers.³⁹ ACA believes there is room for improvement, which would facilitate greater participation by service providers – and would ease the burden of schools and libraries seeking to procure supported services. Currently, the regulations require the applicant to list the specified services and provide “sufficient information to enable bidders to reasonably determine the needs of the applicant.”⁴⁰ Simplifying the ESL as proposed above should help clarify the applicant’s service needs, but, as ACA members know, major customers generally require more extensive terms and conditions. Fortunately, as with services, terms and conditions are relatively well-known and often common in the industry, which should enable the Commission to develop a relatively complete template for Form 470 that can be used by all applicants. ACA thus proposes the Commission undertake a process to develop a template Form 470 that applicants should be encouraged to use. The template would provide a common format along with suggested terms and conditions and, at the same time, enable the applicant to tailor the solicitation to unique requirements.

Use of a common template for Form 470 also would help achieve the Commission’s objective of ensuring “cost-effective purchasing on an application-by-application basis.”⁴¹ The regulations now require that applicants select service providers based primarily on price.⁴² But,

³⁹ See *id.*, ¶ 205.

⁴⁰ 47 C.F.R. § 54.503(c)(1).

⁴¹ NPRM, ¶ 211.

⁴² See 47 C.F.R. § 54.503(c)(2)(vii).

when there is greater variability in the service offerings and the terms and conditions for providing those services, it becomes much more difficult to determine whether an applicant bases its decision largely on price. By having standard descriptions of services and terms and conditions (i.e. more objective and industry-standard criteria), a template should ensure an applicant bases its decision primarily on pricing.

4. Provide for Enhanced Notification of Solicitations. Form 470 is currently posted on the Universal Service Administrative Company's website for 28 days after which the applicant may contract for services.⁴³ ACA believes additional notification would prove beneficial for the program, the applicant, and service providers. It suggests the applicant post a notice in a major local publication and make reasonable efforts to contact potential service provider bidders, particularly those with facilities in the relevant area.

5. Provide Consistent Requirements for the Procurement Process. The Commission inquires about how the E-rate procurement process should intersect with state and local competitive bidding requirements.⁴⁴ Currently, both federal and state and local requirements apply.⁴⁵ ACA believes that while applicants should comply with state and local requirements, it is essential the FCC establish and enforce requirements for a fair and open competitive bidding process and any state and local requirements should not supersede these federal requirements. The rationale is straightforward: the Commission has a responsibility to ensure that federal funds are spent most effectively and efficiently. In addition, by having more consistent requirements, services providers should find it easier to participate.

⁴³ See 47 C.F.R. § 54.503(c)(3-4)

⁴⁴ See NPRM, ¶ 206.

⁴⁵ See 47 C.F.R. § 54.503(b).

IV. CONCLUSION

The Commission's NPRM is the right document at the right time. As discussed by the President, Senator Rockefeller, the Commission, and numerous public sector groups and private entities, it is critical to update the E-rate program so it can advance digital learning. The NPRM goes a long way to setting that process in motion. Yet, before adopting new policies, the Commission needs to ensure there is sufficient data upon which to base them. Only then can the Commission achieve its objectives most effectively and efficiently. ACA and its members look forward to working with the Commission as the proceeding evolves.

Respectfully submitted,



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